IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 1ST JANUARY 2007 / 11TH POUSHA, 1928

Crl.MC.No. 891 of 2006()

CMP.5055/2004 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, NEDUMANGAD
CRIME NO.82/04 OF VATTAPPARA POLICE STATION.

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PETITIONER: APPELLANT/ACCUSED

GOPI, S/O.PAULOSE, AGED 38 YEARS,
EENTHAVILA VEEDU, VEMBAYAM P.O.,
NEDUMANGADU, THIRUVANANTHAPURAM.

BY ADV. SRI.R.S.KALKURA

RESPONDENTS: COMPLAINANT AND STATE

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1. STATE OF KERALA, REPRESENTED BY
SUB INSPECTOR OF POLICE, VATTAPPARA POLICE
STATION THROUGH PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, ERNAKULAM.

2. DR.J.RADHA BAI, D/O.JANAMMA,
AGED 55 YEARS, RESIDING AT "SANJIVINI VEEDU",
KOCHIRA P.O., VEMBAYAM VILLAGE,
THIRUVANANTHAPURAM.

BY ADV. SRI.J.JAYAKUMAR
BY P.P. SRI. K.A. AKBAR.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 01/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 891 OF 2006

Dated this the 1st day of January, 2007

ORDER

The petitioner is the accused in a prosecution initiated on the basis of a private complaint filed by the 2nd respondent herein. The allegation is that the petitioner has committed the offence of cheating punishable under Sec.420 of the IPC. A mini bus was allegedly purchased by the petitioner using the funds advanced by the 2nd respondent herein. The 2nd respondent was allegedly defrauded. The vehicle was purchased in the name of the petitioner though it really belonged to the 2nd respondent herein.

2. The vehicle has been produced before the learned Magistrate. The same was directed to be released to the petitioner as per the impugned order subject to conditions. One of the conditions imposed is that the petitioner must produce a bank guarantee for an amount of Rs.4 lakhs to the satisfaction of the court. There is also a condition that the petitioner must execute a bond for Rs.4 lakhs. The impugned order was passed as early as on 5/7/2004. The petitioner has

not been able to produce the bank guarantee as per the condition imposed. The learned counsel for the petitioner submits that the condition that a bank guarantee for Rs.4 lakhs must be produced is too harsh and onerous. Because of the harshness of the said condition the petitioner has not been able to take advantage of the impugned order directing release of the vehicle to him. He prays that the condition that the petitioner must produce a bank guarantee may be set aside and there may be an appropriate direction for execution of a bond with sureties. The learned counsel for the petitioner further submits that the condition that a bond must be executed for Rs.4 lakhs is also unnecessary. It may suitably be modified, it is prayed.

3. The learned counsel for the respondent/complainant submits that the vehicle really belongs to the 2nd respondent and that if the vehicle were handed over to the petitioner without appropriate safeguards, that would result in denial of justice to the 2nd respondent herein. The learned counsel points out that the impugned order was passed as early as on 5/7/04 and the petitioner has come to this Court only on 20/3/2006. This shows want of bona fides. The learned counsel for the respondent/ complainant further points out that there is a civil case between

the parties and the same is listed for trial to this date. In these circumstances, the conditions may not be altered. If at all the conditions are altered, appropriate safeguards may be insisted so that the right of the respondent/complainant will not be frustrated.

4. A report was called for from the learned Magistrate. The learned Magistrate has reported that the vehicle is still in the custody of the court kept at the Police Station. Cognizance has been taken by the learned Magistrate on 14/2/2006 on the basis of a final report submitted by the police. The accused has not entered appearance. There is no prospect of immediate disposal of the case, it is pointed out.

5. Having considered all the relevant inputs, I am satisfied that the present scenario of the vehicle getting damaged and deteriorated consequent to the inability of the petitioner to produce bank guarantee has got to be avoided. As indicated in **Sunderbhai Ambalal Desai v. State of Gujarat** (2003 SC 638) the courts must show anxiety to ensure that such valuable property does not get damaged and deteriorated by exposure to sun and rain. I am satisfied that the condition that the bank guarantee must be produced can be deleted and the vehicle can

be directed to be released to the petitioner on condition that he executes a bond for Rs.4 lakhs with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

6. Accordingly, this Crl.M.C. is allowed. Condition Nos.3 and 4 in the impugned order dated 5/7/04 shall stand modified. The vehicle shall be released to the petitioner subject to other conditions imposed on condition that he executes a bond for Rs.4 lakhs with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge